

Notice of Allowability

Application No.

09/911,732

Examiner

David A. Lambertson

Applicant(s)

ATABEKOV ET AL

Art Unit

1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 6 January 2005.
2. ☒ The allowed claim(s) is/are 19,20,23,24,29-31,33,34,36,38 and 40-43.
3. ☒ The drawings filed on 25 July 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 09/424,793.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

Applicant's declaration under 37 CFR 1.132, filed October 6, 2004 has now been considered.

Claims 20, 36, 38 and 41-43 are directed to an allowable product. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), claims 19, 23, 24, 29-31, 33, 34 and 40, directed to the process of making or using the patentable product, previously withdrawn from consideration as a result of a restriction requirement, are now subject to being rejoined. Claims 19, 23, 24, 29-31, 33, 34 and 40 are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Since all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, the restriction requirement made in the Office action mailed on January 16, 2004 (by manner of election by original presentation) is hereby withdrawn.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with MaryAnne Armstrong on March 8, 2005.

The application has been amended as follows:

In the specification:

Art Unit: 1636

In the amendment to the first line of the specification (submitted July 25, 2001), please update the status of US Application 09/424,793 as US Patent No. 6,376,745.

On the first page of the claims, please substitute "What is claimed is:" for the term "Claims."

In the claims:

Claim 19. A process for producing stable cell clones or lines, ~~of or~~ or transgenic plants ~~or animals~~, which produce a protein of interest, which comprises introducing into cells a recombinant DNA molecule comprising

(a) a transcriptional promoter;

(b) first plant-expressible gene linked to said transcriptional promoter;

(c) a CDNA sequence designated an internal ribosome entry site (IRES), which is located 3' to the first plant-expressible gene, whereby said IRES is a eukaryotic, plant-specific IRES that originates from a tobamovirus;

(d) a second plant-expressible gene located 3' to said IRES such that the second gene is placed under the translational control of said IRES, wherein said first plant-expressible gene or said second plant-expressible gene is selectable marker.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Lambertson whose telephone number is (571) 272-0771. The examiner can normally be reached on 6:30am to 4pm, Mon.-Fri., first Friday off.

Art Unit: 1636

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel, Ph.D. can be reached on (571) 272-0781. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David A. Lambertson, Ph.D.
AU 1636



JAMES KETTER
PRIMARY EXAMINER